



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

May 26, 1993

Mr. Riley J. Simpson  
City Attorney  
City of Copperas Cove  
P.O. Box 1111  
Copperas Cove, Texas 76522

OR93-267

Dear Mr. Simpson:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 19189.

The Copperas Cove Police Department (the "department") received a request for information in the personnel file of a department employee. Specifically the original request, dated May 12, 1992, included:

1. Copy of my Personnel file.
2. Copy of all paperwork submitted to the Grievance Committee pertaining to Rene Alesick's grievance in this same matter.
3. Copy of any paperwork submitted by the Grievance Committee in the aforementioned matter.
4. Copy of any paperwork submitted to the Grievance Committee by the City Manager in reference to my grievance.

You provided the information requested in items 1 and 4, but did not respond to items 2 and 3. If a governmental body denies a request on section 3(a) grounds, it must seek an attorney general decision regarding the permissibility of the denial. Open Records Decision No. 452 (1986). You did not seek an opinion from our office within ten days of the request as to whether the information fell within any specific exception under section 3(a), as required by section 7(a) of the act. Section 7(a) provides:

If a governmental body receives a written request for information which it considers within one of the exceptions stated in Section 3 of this Act, but there has been no previous determination that it falls within one of the exceptions, the governmental body within a

reasonable time, no later than ten calendar days, after receiving a written request must request a decision from the attorney general to determine whether the information is within that exception. If a decision is not so requested, the information shall be presumed to be public information.

When a governmental body fails to request a decision from our office within the ten day deadline established by section 7(a), the information is presumed open to the public. See *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ). The governmental body must show a compelling reason for withholding the information to overcome the presumption of openness. *Id.* Therefore, the information in the May, 1992 request is presumed open because you failed to request an opinion from this office, and you have not stated any compelling reasons for nondisclosure.

The department received a new request from the same requestor for basically the same information on February 25, 1993. Specifically, the new request is for "the Grievance Committee packet in the matter of the grievance filed by Ms. Rene Alesick dated February 25, 1992." You have requested a determination from our office as to the new request, but you failed to act on the original request for the same information. Therefore, the information is presumed open unless your claim provides a compelling reason to overcome the presumption.

You seek to withhold the requested information under section 3(a)(2), "information in personnel files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Section 3(a)(2) excepts information in personnel files only if it meets the test under section 3(a)(1) for invasion of privacy. *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.). Information may be withheld if

- (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public.

*Industrial Found. of the S. v. Texas Indus. Accident Bd*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Although information relating to a disciplinary action against a public employee may be highly intimate or embarrassing, the public has a legitimate interest in knowing the reasons why such actions were taken. Open Records Decision No. 444 (1986). Moreover, section 3(a)(2) does not except from disclosure the final determination of a complaint against a police officer and letters advising her of disciplinary action. Open Records Decision No. 350 (1982). Because 3(a)(2) does not apply and you have not provided a compelling reason to overcome the presumption of openness, you must disclose the requested information in its entirety.

We note for the department's future reference that if the requested information is not made confidential by law, and the governmental body has not responded to a request for information by either releasing the information or requesting an open records determination from the attorney general, then a violation of section 7(a) of the Open Records Act has occurred. Section 10 provides for criminal penalties for failure to comply with the Open Records Act. Subsection (b) of that section provides:

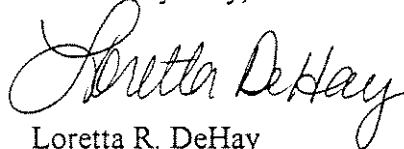
An officer for public records, or his agent, commits an offense if, with criminal negligence, he or his agent fails or refuses to give access to, or to permit or provide copying of, public records to any person upon request as provided in this Act.

A violation of the act constitutes a misdemeanor and official misconduct. *Id.* § 10(f). In addition, section 8 provides for civil remedies. Subsection (a) of that section provides:

If a governmental body refuses to request an attorney general's decision as provided in this Act, or to supply public information or information which the attorney general has determined to be a public record, the person requesting the information or the attorney general may seek a writ of mandamus compelling the governmental body to make the information available for public inspection.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay  
Assistant Attorney General  
Opinion Committee

LRD/KKO/le

Ref.: ID# 19189

Enclosures: submitted documents

cc: Mr. Timothy Lawrence  
Route 2, Box 693  
Copperas Cove, Texas 76522  
(w/o enclosures)